

**ASSEMBLY BILL**

**No. 2171**

---

**Introduced by Assembly Member Wieckowski**  
**(Coauthor: Assembly Member Yamada)**  
(Coauthor: Senator Leno)

February 20, 2014

---

An act to add Article 2.5 (commencing with Section 1569.261) to Chapter 3.2 of Division 2 of, and to add Section 1569.425 to, the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2171, as introduced, Wieckowski. Residential care facilities for the elderly.

Existing law, the Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services. A violation of these provisions is a misdemeanor.

This bill would establish specified rights for residents of residential care facilities for the elderly, including, among other things, to be treated with dignity and respect, to personal privacy of accommodations, medical treatment, personal care and assistance, and to confidential treatment of their records and personal information, as specified. The bill would require, at admission, a facility staff person to personally advise a resident and the resident's representative, as described, of these and other specified rights and to provide them with a written copy. The bill would also provide that a licensee who violates the provisions of the Residential Care Facilities for the Elderly Act may be prosecuted by the Attorney General in a civil action for an injunction or civil damages, or both, and would authorize a former or current resident of

a residential care facility for the elderly to bring a civil action against any person or entity that violates that act, any regulatory requirements adopted by the department, or any right of the resident, as prescribed.

By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Article 2.5 (commencing with Section 1569.261)  
2     is added to Chapter 3.2 of Division 2 of the Health and Safety  
3     Code, to read:

4

5

Article 2.5. Resident's Bill of Rights

6

7     1569.261. (a) It is the intent of the Legislature in enacting this  
8     article to adopt fundamental rights for all persons residing in a  
9     residential care facility for the elderly, as defined in Section 1569.2,  
10    to ensure that facilities respect and promote these rights, and to  
11    provide residents the ability to enforce their rights.

12    (b) In establishing this bill of rights, the Legislature intends that  
13    persons residing in residential care facilities for the elderly be  
14    treated with dignity, kindness, and respect, and that their civil  
15    liberties be fully honored.

16    (c) A central purpose of the bill of rights is to strengthen a  
17    resident's right to make choices about his or her care, treatment,  
18    and daily life in the facility and to ensure that the resident's choices  
19    are respected. The Legislature intends to enhance each resident's  
20    autonomy and ability to make decisions concerning his or her life.

21    (d) The Legislature also intends that each residential care facility  
22    for the elderly provide a safe, comfortable, and homelike  
23    environment for its residents and that it protect residents from any  
24    type of physical or mental abuse, neglect, restraint, exploitation,  
25    or endangerment.

1 1569.263. For purposes of this article, the following definitions  
2 shall apply:

3 (a) “Chemical restraint” means any drug that is used for  
4 discipline or convenience and not required to treat a medical  
5 condition.

6 (b) “Inappropriate use of psychoactive drugs” means a  
7 psychoactive drug that is given to a resident under any of the  
8 following circumstances:

9 (1) Without the informed consent of the resident or the resident’s  
10 representative, as described in Section 1569.271.

11 (2) To treat needs or symptoms associated with dementia or  
12 related diseases, unless the facility has first tried and documented  
13 appropriate nonpharmacological approaches to respond to the  
14 resident’s needs.

15 (3) To treat needs or symptoms associated with dementia or  
16 related diseases, unless a physician has directly examined a resident  
17 for this purpose and determined that the medication is medically  
18 necessary for this purpose.

19 (4) For purposes of discipline or convenience and not required  
20 to treat a medical condition.

21 (5) On a pro re nata or as-needed basis.

22 (c) “Physical restraint” means any manual method or physical  
23 or mechanical device, material, or equipment attached or adjacent  
24 to the resident’s body that the resident cannot remove easily and  
25 that restricts freedom of movement or normal access to one’s body.

26 (d) “Psychoactive drug” means a medication that is used to alter  
27 mood, level of anxiety, behavior, or cognitive processes.

28 1569.265. Rights and liberties set forth in this article do not  
29 diminish a resident’s constitutional rights or any other rights set  
30 forth in other state or federal laws and regulations. Persons residing  
31 in residential care facilities for the elderly shall continue to enjoy  
32 all of their civil and legal rights.

33 1569.267. (a) At admission, a facility staff person shall  
34 personally advise a resident and the resident’s representative of,  
35 and give a complete written copy of, these rights and the personal  
36 rights in Section 87468 of Title 22 of the California Code of  
37 Regulations. The licensee shall have each resident and the  
38 resident’s representative sign a copy of these rights, and the  
39 licensee shall include the signed copy in the resident’s record.

1 (b) Facilities shall prominently post, in areas accessible to the  
2 residents and their representatives, a copy of these rights.

3 (c) The rights posted pursuant to subdivision (b) shall be posted  
4 both in English and in any other language in a facility where 5  
5 percent or more of the residents can only read that other language.

6 (d) The facility shall provide initial and ongoing training for all  
7 members of its staff to ensure that residents' rights are fully  
8 respected and implemented.

9 1569.269. (a) Residents shall have all of the following rights:

10 (1) To be treated with dignity and respect.

11 (2) To personal privacy in accommodations, medical treatment,  
12 personal care and assistance, visits, communications, telephone  
13 conversations, use of the Internet, and meetings of resident and  
14 family groups.

15 (3) To confidential treatment of their records and personal  
16 information and to approve their release, except as authorized by  
17 law.

18 (4) To be encouraged and assisted in exercising their rights as  
19 citizens and as residents of the facility. Residents shall be free  
20 from interference, coercion, discrimination, and retaliation in  
21 exercising their rights.

22 (5) To a safe and homelike environment.

23 (6) To care, supervision, and services that meet their individual  
24 needs and is delivered by staff that are at all times sufficient in  
25 numbers, qualifications, and competency to meet their needs.

26 (7) To be served food of the quality and in the quantity necessary  
27 to meet their nutritional needs.

28 (8) To make choices concerning their daily life in the facility.

29 (9) To fully participate in planning their care, including the right  
30 to attend and participate in meetings or communications regarding  
31 the care and services to be provided in accordance with Section  
32 1569.80, and to involve persons of their choice in the planning  
33 process. The facility shall provide necessary information and  
34 support to ensure that residents direct the process to the maximum  
35 extent possible, and are enabled to make informed decisions and  
36 choices.

37 (10) To consent to or reject care or services after being fully  
38 informed of all material information relevant to the resident's  
39 decision.

1 (11) To be free from neglect, financial exploitation, involuntary  
2 seclusion, punishment, humiliation, intimidation, and verbal,  
3 mental, physical, or sexual abuse.

4 (12) To be free from physical and chemical restraints and the  
5 inappropriate use of psychoactive drugs.

6 (13) To present grievances and recommend changes in policies,  
7 procedures, and services to the staff of the facility, the facility's  
8 management and governing authority, and to any other person  
9 without restraint, coercion, discrimination, reprisal or other  
10 retaliatory actions. The licensee shall take prompt actions to resolve  
11 residents' grievances.

12 (14) To contact the State Department of Social Services, the  
13 long-term care ombudsman, or both, regarding grievances against  
14 the facility. The facility shall post the telephone numbers and  
15 addresses for the local offices of the State Department of Social  
16 Services and ombudsman program, in accordance with Section  
17 9718 of the Welfare and Institutions Code, conspicuously in the  
18 facility foyer, lobby, residents' activity room, or other location  
19 easily accessible to residents.

20 (15) To be fully informed, as evidenced by the resident's written  
21 acknowledgement, prior to or at the time of admission, of all rules  
22 governing residents' conduct and responsibilities. In accordance  
23 with Section 1569.885, all rules established by a facility shall be  
24 reasonable and shall not violate any rights set forth in this chapter  
25 or in other applicable laws or regulations.

26 (16) To receive in the admission agreement a comprehensive  
27 description of the method for evaluating residents' service needs  
28 and the fee schedule for the items and services provided, and to  
29 receive written notice of any rate increases pursuant to Sections  
30 1569.655 and 1569.884.

31 (17) To be informed in writing at or before the time of admission  
32 of any resident retention limitations set by the state or facility,  
33 including any limitations or restrictions on the facility's ability to  
34 meet residents' needs.

35 (18) To reasonable accommodation of individual needs and  
36 preferences in all aspects of life in the facility, except when the  
37 health or safety of the individual or other residents would be  
38 endangered.

39 (19) To reasonable accommodation of resident preferences  
40 concerning room and roommate choices.

1 (20) To written notice of any room changes at least 30 days in  
2 advance unless the request for a change is initiated by a resident,  
3 required to fill a vacant bed, or necessary due to an emergency.

4 (21) To share a room with the resident's spouse, domestic  
5 partner, or a person of resident's choice when both spouses,  
6 partners, or residents live in the same facility and consent to the  
7 arrangement.

8 (22) To select their own physicians, pharmacies, privately, paid  
9 personal assistants, hospice agency, and health care providers.

10 (23) To have prompt access to review all of their records and  
11 to purchase photocopies. Photocopied records shall be promptly  
12 provided, not to exceed two business days, at a cost not to exceed  
13 the community standard for photocopies.

14 (24) To be protected from involuntary transfers, discharges, and  
15 evictions in violation of state laws and regulations. Facilities shall  
16 not involuntarily transfer or evict residents for grounds other than  
17 those specifically enumerated under state law or regulations, and  
18 shall comply with enumerated eviction and relocation protections  
19 for residents. For purposes of this paragraph, "involuntary" means  
20 a transfer, discharge, or eviction that is initiated by the facility,  
21 not by the resident.

22 (25) To move from the facility.

23 (26) To have relatives and other individuals of the resident's  
24 choosing visit at any time, subject to the resident's right to  
25 withdraw consent.

26 (27) To receive written information on the right to establish an  
27 advanced health care directive and, pursuant to Section 1569.156,  
28 the facility's written policies on honoring those directives.

29 (28) To be encouraged to maintain and develop their fullest  
30 potential for independent living through participation in activities  
31 that are designed and implemented for this purpose, in accordance  
32 with Section 87219 of Title 22 of the California Code of  
33 Regulations.

34 (29) To organize and participate in a resident council that is  
35 established pursuant to Section 1569.157.

36 (30) To protection of their property from theft or loss in  
37 accordance with Sections 1569.152, 1569.153, and 1569.154.

38 (31) To manage their financial affairs. The facility shall not  
39 require residents to deposit their personal funds with the facility,  
40 and no licensee or employee of a facility shall become

1 representative payee for any payments made to residents or serve  
2 as agent for a resident under a power of attorney.

3 (32) Other rights as specified in this chapter or other state laws  
4 or regulations.

5 (b) A licensed residential care facility for the elderly shall not  
6 discriminate against a person seeking admission or a resident based  
7 on sex, race, color, disability, religion, national origin, marital  
8 status, registered domestic partner status, ancestry, actual or  
9 perceived sexual orientation, or actual or perceived gender identity.

10 (c) No provision of a contract of admission, including all  
11 documents that a resident or his or her representative is required  
12 to sign at the time of, or as a condition of, admission to a residential  
13 care facility for the elderly, shall require that a resident waive  
14 benefits or rights to which he or she is entitled under this chapter  
15 or provided by federal or other state law or regulation.

16 (d) Residents' family members, friends, and representatives  
17 have the right to organize and participate in a family council that  
18 is established pursuant to Section 1569.158.

19 1569.271. (a) If a resident lacks the capacity to exercise the  
20 rights under this chapter or provided by federal or other state law  
21 or regulation, the resident's representative shall have the authority  
22 to exercise the resident's rights, but may not act in any way to  
23 restrict them. The resident's incapacity shall be determined by a  
24 court in accordance with state law or by the resident's physician,  
25 unless the physician's determination is disputed by the resident or  
26 resident's representative.

27 (b) Persons who may act as the resident's representative include  
28 a conservator, guardian, person authorized as agent in the resident's  
29 valid advance health care directive, the resident's spouse, registered  
30 domestic partner, or family member, or other surrogate  
31 decisionmaker designated consistent with statutory and case law.

32 SEC. 2. Section 1569.425 is added to the Health and Safety  
33 Code, immediately following Section 1569.42, to read:

34 1569.425. (a) A licensee who violates any provision of this  
35 chapter or regulations adopted by the department pursuant to this  
36 chapter, and whose violation presents an immediate or substantial  
37 threat to the physical health, mental health, or safety of a resident  
38 of residential care facility for the elderly may be enjoined from  
39 permitting the violation to continue or may be sued for civil  
40 damages within a court of competent jurisdiction. An action for

1 injunction or civil damages, or both, may be prosecuted by the  
2 Attorney General in the name of the people of the State of  
3 California upon his or her own complaint or upon the complaint  
4 of a board, officer, person, corporation, or association, or by a  
5 person acting for the interests of itself, its members, or the general  
6 public. The amount of civil damages that may be recovered in an  
7 action brought pursuant to this section shall not exceed the  
8 maximum amount of civil penalties that could be assessed on  
9 account of the violation or violations. The licensee shall be liable  
10 for costs and attorney fees if the plaintiff prevails in an action  
11 pursuant to this subdivision.

12 (b) A current or former resident of a residential care facility for  
13 the elderly, as defined in subdivision (k) of Section 1569.2, may  
14 bring a civil action against any person or entity that violates any  
15 requirements of this chapter, any regulatory requirements adopted  
16 by the department, or any right of the resident provided by federal  
17 or state law or regulation. The suit shall be brought in a court of  
18 competent jurisdiction. The licensee shall be liable for the acts of  
19 the licensee's employees. The licensee shall be liable for up to one  
20 thousand dollars (\$1,000) per day for each violation, and for costs  
21 and attorney fees, and may be enjoined from permitting the  
22 violation to continue. Injunctive relief granted under this section  
23 shall be deemed prohibitory, and shall not be stayed pending  
24 appeal. The statute of limitations for suit under this subdivision  
25 shall be three years, which shall not begin to run until the violation  
26 has been discovered. The current or former resident has the right  
27 to a trial by jury. The right to bring a civil action shall survive the  
28 death of the resident. An agreement by a resident of a residential  
29 care facility for the elderly to waive his or her rights to sue pursuant  
30 to this subdivision shall be deemed contrary to public policy and  
31 shall be void and unenforceable.

32 (c) The remedies specified in this section shall be in addition  
33 to any other remedy provided by law.

34 SEC. 3. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section 17556 of  
40 the Government Code, or changes the definition of a crime within



1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

O